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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re R.D., A Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

V.M.,

Defendant and Appellant.

B294378

(Los Angeles County
Super. Ct. No. DK22371A)

APPEAL from orders of the Superior Court of Los Angeles County, Daniel Zeke Ziedler, Judge. Affirmed.

Brian C. Bitker, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Sarah Vesecky, Senior Deputy County Counsel, for Plaintiff and Respondent.

Mother sought reinstatement of her reunification services by filing a petition under Welfare and Institutions Code section 388. She alone appeals the denial of this petition without a hearing. We affirm because Mother failed to make a prima facie showing of changed circumstances or that reinstating reunification services was in daughter R.D.'s best interests. Mother was in the early stages of treatment, had recently relapsed, and was not complying with her sobriety program. Additionally, R.D. had adjusted to life with her foster parents, who were caring for her appropriately. All citations are to the Welfare and Institutions Code.

I

We begin with the facts.

In February 2017, the Department of Children and Family Services received a referral upon R.D.'s birth because Mother tested positive for methamphetamine. Although R.D. tested negative for any drugs at the time of her birth, Mother admitted to using methamphetamine ten times during her pregnancy. Father admitted to a history of drug abuse and to an extensive criminal history.

Mother has an older daughter, S.J., who was residing with her maternal grandmother at the time of R.D.'s birth. S.J. is not involved in this appeal.

In April 2017, the court removed R.D. from Father and allowed R.D. to remain in Mother's care so long as Mother continued in her drug rehabilitation program, remained sober, and cooperated with the Department. Mother did not comply with the court's orders. She missed many drug tests ordered by the court. In May 2017, she tested positive for morphine and opiates, which she denied using. Mother also allowed Father to see R.D., which violated the court's order.

In June 2017, the court declared R.D. a dependent of the court and removed her from Mother's custody. The court ordered Mother and Father's visits with R.D. to be monitored and that the parents not visit together. The court ordered the Department to provide the parents with reunification services and ordered Mother to participate in a drug and alcohol program with after care, weekly random drug testing, a 12-step program with a court card and sponsor, parenting classes, and individual counseling.

Mother enrolled in a drug and parenting program in June 2017 but was discharged in September 2017 for unexcused absences and program noncompliance. Mother claims she was unable to participate in the program because she was arrested in August 2017. Mother did not start another program for about six months.

From July through November 2017, Mother did not show up for twelve drug tests. In October 2017, during a monitored visitation with R.D., the case worker believed Mother to be under the influence. Mother agreed to take a drug test and tested positive for amphetamines, methamphetamines, and alcohol. During this time, Father did not visit R.D. In December 2017, the court terminated reunification services as to both parents.

In April 2018, Mother filed a section 388 petition asking the court to return R.D. to her care or to reinstate reunification services. The court noted Mother had provided evidence of only two changes. First, now she was participating in an in-patient program. Second, Mother claimed she perceived the possibility of termination of her parental rights as a wake up call. After hearing argument, the court denied Mother's section 388 petition, finding Mother had shown "changing, [but] not changed" circumstances. The court also found that to the extent Mother's circumstances had changed, granting the petition would not be in R.D.'s best interest.

In October 2018, Mother's program counselor reported Mother had made significant progress in the program and was one class shy of completing the parenting course. Mother's counselor also reported that Mother was engaged in group activities and was "developing safe coping skills." However, Mother tested positive for alcohol in July and August 2018 and had many unexcused absences.

As of October 2018, Mother was living in a motel with her sister. Mother's visits with R.D. were "consistent for the most part." R.D.'s foster parents met all of the child's needs and "were very involved." R.D. was well adjusted and had bonded with her foster parents.

In November 2018, Mother filed another section 388 petition requesting that the court reinstate Mother's reunification services. The court denied Mother's petition without a hearing because Mother had shown neither a sufficient change of circumstances nor that reinstating reunification services would be in R.D.'s best interest.

The court held a section 366.26 hearing where Mother asked the court to find that she qualified for the beneficial relationship exception to the termination of parental rights. The court found Mother did not qualify, so it terminated her parental rights and freed R.D. for adoption.

Mother appealed.

II

Section 388 allows a parent to try to get the court to modify an order. The parent must show a change of circumstances as well as that the proposed change would be in the child's best interests. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) Courts must liberally construe section 388 petitions in favor of sufficiency (Cal. Rules of Court, rule 5.570(a)) and may deny a hearing only when the application reveals no changed circumstances or new evidence that

might necessitate a change of order. (*In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1414.) So the court must order a hearing if the petition presents evidence a hearing would promote the best interests of the child. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 461.) We review the juvenile court's denial of such a hearing for abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.)

Mother failed to make a prima facie showing of changed circumstances and that the change would serve R.D.'s best interests.

Mother enrolled in a residential substance abuse program in February 2018. The record does not show whether Mother completed this inpatient program but notes Mother enrolled in an outpatient treatment program in July 2018. Mother tested positive for alcohol on July 12, 2018 and August 2, 2018, *after* enrolling in the outpatient program. Mother also missed a drug test on August 14, 2018. Mother was behind on her 12-step meetings and needed to make up the meetings she missed. It is unclear from the record whether Mother had found a sponsor, as the court had ordered. As of October 2018, Mother was living in a motel with her sister. When the court denied Mother's section 388 petition in November 2018, Mother had begun individual therapy sessions but had been attending weekly sessions for only about a month.

Mother failed to show changed circumstances. (See *In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1449–1451 [Mother's section 388 petition was properly denied without a hearing].) She remained in the early stages of treatment. She was struggling to stay sober. She was not complying with her 12-step program and had only very recently begun individual counseling. The juvenile court certainly did not abuse its discretion.

Mother also did not show that reinstating reunification services was in R.D.'s best interests. R.D. was but four months old when the court removed her from Mother's care. Since then,

Mother's contact was limited to weekly monitored visits. R.D.'s foster parents had met all of the child's needs and were "very involved." R.D. was well adjusted and had bonded with her foster parents. Mother has maintained a relationship with R.D., but R.D.'s foster parents were solely responsible for providing for R.D.'s care and comfort. They performed that role for the vast majority of R.D.'s young life.

Once reunification services are terminated, the focus shifts to the needs of the child for permanency and stability as the parent's interests in the care and custody of the child are no longer paramount. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) A rebuttable presumption arises that continued foster care is in the child's best interests. (*Id.* at p. 302.) R.D. had adjusted to life with her foster parents, who were loving and caring. Mother's consistent relationship with R.D. was laudable, but Mother saw her daughter only a few hours each week. Mother was not responsible for any aspect of R.D.'s care.

Mother did not make the requisite showing that reinstatement of reunification services would promote R.D.'s best interests. The court did not err.

DISPOSITION

We affirm.

WILEY, J.

WE CONCUR:

BIGELOW, P. J.

STRATTON, J.